

REMARKS

In view of the following remarks, the Examiner is requested to allow Claims 23 to 52, the only claims pending and under examination in this application.

Claims 1 to 22 have been cancelled in lieu of newly presented Claims 23 to 52. Newly presented Claims 23 to 52 find support in the originally pending Claims 23 to 52, as well as throughout the specification as originally filed. Accordingly, no new matter has been added and entry of Claims 23 to 52 is respectfully requested.

CLAIM OBJECTIONS

Objections have been raised to Claims 2 and 8. In view of the cancellation of these claims, these objections are moot.

Claim Rejections – 35 U.S.C. § 101

Claims 16-18 were rejected under 35 U.S.C. § 101. In view of the cancellation of these claims, this rejection is moot.

Claim Rejections – 35 U.S.C. § 112, first paragraph

Claims 5-8, 12 and 13 were rejected under 35 U.S.C. § 101. In view of the cancellation of these claims, this rejection is moot.

Claim Rejections – 35 U.S.C. § 102

Claims 1-2, 9-11 and 14-22 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Nishimura (USPN 5,137,028).

It is respectfully submitted that newly presented Claims 23 to 52 are not anticipated by Zartman for the following reasons.

Zartman describes a thermometer which reacts to a drop in temperature at the beginning of parturition and emits a signal or alarm to indicate that the temperature drop has occurred; generally this temperature drop is caused by expulsion of the thermometer from the body. The device of the present invention as defined by the claims filed herewith does not emit a signal, it merely records temperature data, the data is useful in the determination of infection or of a pre-ovulation spike, neither of which function is described in Zartman. Moreover, the device of Zartman, irrespective of purpose does not contain means for **recording** temperature data. The device of Zartman contains temperature sensing means and either relaying means or alarm means (see column 9, lines 45 – 47; column 10 lines 18 – 21; column 12, lines 13 – 18; column 13, lines 55 – 57, and column 14, lines 56 – 59).

Additionally, since the device of Zartman is intended to indicate the onset of parturition it would not be worn for an entire menstrual cycle.

The device of the present invention, as defined in the newly filed claims, records temperature data electronically on a device worn continuously in the vagina. The temperature is sensed often, such as every 20 minutes, and the temperature determined (the data) is recorded and stored until manually cleared after removal of the device. Hence, the device is periodically removed and the data recorded thereon accessed and interpreted to differentiate between natural diurnal or cyclic variations throughout the day, such as periods of activity or sleep, and a temperature rise attributable to infection or ovulation. This does not occur in Zartman, even when fetal stress is being monitored; according to Zartman a once daily temperature reading is sufficient for a determination of foetal stress (see column 5, lines 39 – 49).

The Examiner states that Zartman describes a device where the data storage means are integral with the temperature sensing means. We respectfully disagree with this interpretation. "Integral" requires the components to be within a single unit, in the context of Zartman, this means in the payload. In Zartman, the recording means are remote from the sensing means, generally at a monitoring station, especially in the paragraph cited by the Examiner (column 10, lines 46- 57) which uses the device of the preceding paragraph where the sensing means 82 and the relaying means 84 are contained within the payload 34 and the receiving means 86, temperature analyzing means 88 and alarm means 90 are maintained at remote station 81 (column 10, lines 18 – 21).

Hence, it is believed that the present invention is novel over Zartman.

Claim Rejections – 35 U.S.C. § 103

Claims 3-8 have been rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Zartman in view of Newhall. The claims require the presence of integral recording means. This element is neither taught nor suggested in Zartman in combination with Newhall. As such, this rejection may be withdrawn.

Claims 12-13 have been rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Zartman in view of Inoue. The claims require the presence of integral recording means. This element is neither taught nor suggested in Zartman in combination with Inoue. As such, this rejection may be withdrawn.

CONCLUSION

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone Bret Field at (650) 833-7770.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number STHP-018.

Respectfully submitted,

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